

## **REMARKS**

### **I. Claim Status**

Claims 1-6 and 10 are currently pending and stand rejected. Claim 8 has been canceled without prejudice herein. No claims have been amended herein.

### **II. Claim Rejections**

#### ***Double Patenting Rejection***

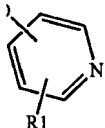
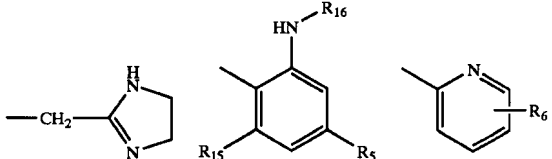
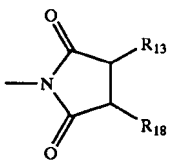
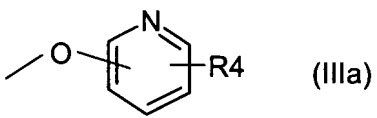
Claims 1-6, 8, and 10 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/482,396. Office Action at 2. Applicants respectfully traverse this rejection.

The Examiner supports this rejection by stating that “[s]ince the patentee teaches a small group of compounds within a genus that overlaps in subject matter with the instant genus, it would have been obvious for one of ordinary skill in the art to easily envision and test the compounds that overlap with the prior art genus of compounds.” *Id.* at 3-4. However, there is no overlap between the compounds claimed in the present invention and those in claims 1-16 of copending Application No. 10/482,396.

The Examiner asserts that Application No. 10/482,396 teaches compounds that are within the scope of the present claims’ Formula I when, *inter alia*, R<sub>6</sub> of Application No. 10/482,396 is -NO<sub>2</sub>. Office Action at 3. However, substituent R<sub>6</sub> of Application No. 10/482,396 is equivalent to R<sub>1</sub> of the present application’s claims. And, in the present application’s claims, R<sub>1</sub> can only be -NO<sub>2</sub> (or NR<sub>16</sub>R<sub>17</sub>) when the compound is of formula (II) wherein the optional double bond exists or in case R<sub>2</sub> and R<sub>3</sub> is benzyloxy or a

group of formula (IIIa), none of which are compounds within the scope of the claims of Application No. 10/482,396. Accordingly, there is no overlap between the compounds of the present claims and those in claims 1-16 of Application No. 10/482,396.

In addition, the compounds encompassed by the present claims would not have been obvious to one of ordinary skill in the art. In order to arrive at the presently claimed compounds, numerous non-obvious choices would need to be made starting from the claims of Application No. 10/482,396. Exemplary differences between the genera claimed in each application are shown below.

Present Claim 1	Claim 1 of Application No. 10/482,396
	<p>R<sub>1</sub> is <math>-(CH_2)_nNR_4R_7</math> or one of the following groups:</p> 
<p>R<sub>1</sub> is H, CN, halogen, <math>-CONH_2</math>, <math>-COOR_{15}</math>, <math>-CH_2NR_{15}R_{18}</math>, <math>NHC(O)R_5</math>, <math>NHCH_2R_5</math>, <math>NHR_{20}</math>, <math>NR_{21}R_{22}</math>, <math>NHC(NH)NHCH_3</math>  or, in case the compound is of formula (II) wherein the optional double bond exists or in case R<sub>2</sub> or R<sub>3</sub> is benzyloxy or a group of formula (IIIa), R<sub>1</sub> can also be <math>-NO_2</math> or <math>NR_{16}R_{17}</math>;</p>	<p>R<sub>6</sub> is <math>-NO_2</math>, <math>-NR_{14}R_{19}</math>, <math>-CF_3</math> or</p> 
<p>R<sub>2</sub> and R<sub>3</sub> are independently H, lower alkyl, lower alkoxy, <math>-NO_2</math>, halogen, <math>-CF_3</math>, <math>-OH</math>, benzyloxy or a group of formula (IIIa)</p>  <p>(IIIa)</p>	<p>R<sub>2</sub> and R<sub>3</sub> are independently H, lower alkyl, lower alkoxy, <math>-NO_2</math>, halogen, <math>-CF_3</math>, <math>-OH</math>, <math>-NHR_8</math> or <math>-COOH</math></p>

Accordingly, the present claims are patentably distinct from those in the copending application, and this rejection should be withdrawn.

***35 U.S.C. § 112, Second Paragraph Rejection***

Claim 8 has been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. Office Action at 4. Applicants respectfully traverse this rejection. However, without conceding the propriety of the rejection and solely to expedite prosecution, claim 8 has been rejected herein. Accordingly, this rejection has been rendered moot and should be withdrawn.

**CONCLUSION**

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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